SIMON CHUA KIM HOCK

v.

PUBLIC PROSECUTOR

HIGH COURT SABAH & SARAWAK, TAWAU
TUAN IAN H.C. CHIN J.
[CRIMINAL APPEAL NO. T(42)-12-1994]
9 AUGUST 1994

CRIMINAL LAW: Corrupt acceptance of gratification - Prevention of Corruption Act 1961 s. 4(a) - Trap money - Trap money not recovered from accused but recovered albeit only partly from the road which the accused traversed in his car - Whether charge proved - Whether reasonable doubt existed - Whether conviction thereof proper.

CRIMINAL PROCEDURE: Broken trial - Trial held over ten sessions extending over two and half years - Trial Judge took two years to write grounds of judgment - Delay in trial and disposal of appeal - Whether accused prejudiced - Sentence of imprisonment - Whether to be disturbed.

EVIDENCE: Best evidence rule - Charge of corrupt acceptance of gratification - Thumb-prints - Evidence of acceptance of envelope containing marked notes adduced - Evidence of accused's thumb-prints on envelope not adduced - Chain of evidence - Whether broken.

This was an appeal by the the appellant, a Police Sergeant, against his conviction on two charges of corruption under s. 3(a)(i) and s. 4(a) respectively of the Prevention of Corruption Act 1961, for which he was sentenced to imprisonment for four months on each charge and ordered to pay RM 3000 to the Federal Consolidated Fund.

The evidence showed that PW1, PW2 & PW3 herein were arrested by the police on 16 January 1986 and were put on remand until 23 January 1986 following a Court order to that effect. While they were under custody the appellant made approaches to PW1 and offered to help secure their release in return for RM 5000. PW1 offered to pay RM 3000 but this was rejected by the appellant. The appellant later suggested, which PW1 agreed, that PW1 would tender a first payment of RM 3000 and that pending payment of the balance sum the appellant would withhold their identity cards. Upon this arrangement the trio were released from police custody on 20 January 1986.

On the same day of his release PW1 lodged a report with the Anti Corruption Agency (ACA) and a trap was laid to nab the appellant whereby PW1 would hand over marked notes of RM 3000 enclosed in an envelope to the appellant at a certain restaurant. At the appointed time and place, with ACA officers in ambush, PW1 made a call to the appellant to come to the restaurant but the appellant, instead of joining PW1 in the said restaurant, had called PW1 to his car and therein accepted the envelope containing the RM 3000 from PW1. The appellant then drove towards the direction of the ambush party. The ACA officers tried but failed to stop the appellant's car there and a car chase followed which ended at the appellant's house. The appellant was then arrested but neither the envelope nor the RM 3000 were recovered from his person, though the identity cards of the trio were found in his possession. The envelope and the marked notes were recovered by PW16 on the road which the appellant was traversing in his car during the car chase. PW16 however only recovered RM 2000 and the remaining RM 1000 was never recovered.

The trial before the Sessions Judge spanned through a period of about two and half years and was held over ten separate sessions. In his judgment the learned Sessions Judge did not deal with the missing RM 1000 but came to the conclusion nevertheless that he was satisfied that PW1 did in fact give the appellant RM 3000 in the appellant's car just before the appellant drove off. He was further satisfied that there was sufficient evidence and corroboration to support the other charge and hence convicted the appellant on both charges. Before the appellate Court the issues that arose were:

(1) Whether the fact that only RM 2000 was recovered from the road cast a reasonable doubt in the case for the prosecution that PW1 had handed RM 3000 to the appellant in the car.

(2) Whether the failure to recover the whole sum of RM 3000 from the road prevented any inference to be drawn that the appellant had thrown the money out of the window of his car.
(3) Whether the fact that there was no evidence adduced to show the existence of the appellant's thumb-prints on the envelope caused a fatal break in the chain of evidence adduced by the prosecution.
(4) Whether the delay in the trial and in supplying the notes of evidence had so affected and prejudiced the accused that the sentence of imprisonment passed against him, in the circumstances, could not be justified and ought to be set aside.

Held:

[1] Unless the missing RM 1000 can be explained it should cast a shadow of doubt on the allegation of PW1 that he had given the appellant the RM 3000 because if RM 3000 was given, RM 3000 should have been recovered given the fact that the money was recovered by PW16 almost immediately after it was alleged to have been thrown away by the appellant.

[2] The appellant was alleged to have received the envelope containing the money from PW1 and later to have thrown the same while fleeing the trap officers. This can only lead one to expect the appellant to have left his finger-prints on the envelope considering that the envelope was recoverd almost immediately after it was alleged to have been thrown away. Yet no evidence was given as to whether finger-prints were lifted from the envelope with the result that there was no evidence that the finger-prints of he appellant were on the envelope. There is thus a vital missing link in the chain of evidence. In the circumstances the appellant should have been discharged and acquitted of the charge of corruptly receiving RM 3000 gratification at the close of the case for the prosecution.

[3] There was evidence to support the finding of solicitation by the Sessions Judge and the Sessions Judge had also dealt with the question of corroboration adequately. Bearing in mind that an appellate Court should not disturb the findings of the lower Court unless the findings are unreasonable or cannot be supported having regard to the evidence or are plainly wrong or perverse, the conviction with regard to the offence of solicitation is therefore affirmed.

[4] The sentence of imprisonment passed in respect of the offence of solicitation, in the circumstances of this case, ought to be set aside. The law demands a speedy trial and an accused person should not be made to wait or be dragged in and out of Court for so many years for the disposal of his case or appeal. The chronology of this trial showed a staggered or broken trial held over ten sessions over a period of well over two and half years and this surely is not how justice should be dispensed. Although the conviction was not based purely on the impressive demeanour of the trio, that does not mean that the staggered or broken trial and the very long delay in supplying the notes of evidence did not prejudice the appellant. In the circumstances the sentence of imprisonment is set aside and a fine of RM 3000 is substituted therefor. The money which the appellant had already paid should be regarded as payment of the fine.

[Appeal partly allowed. Conviction in respect of corrupt acceptance of gratification set aside. Conviction on corrupt solicitation affirmed but sentence of imprisonment thereof set aside and substituted with a fine].

Cases referred to:
Che Din bin Ahmad v. PP [1976] 1 MLJ 289 ***(dist)***
K. Ratnasingam v. Kow Ah Dek & Anor. [1983] 2 CLJ 183 / [1983] 2 MLJ 297 PC ***(cit)***
PP v. Kian Mei Sdn. Bhd. [1992] 4 CLJ 2168 ***(cit)***
Tan Hun Wah v. PP [1994] 2 CLJ 180 / [1994] 1 AMR 3:113 ***(refd)***

Legislation referred to:
Evidence Act 1950, s. 134

For the appellant - Mirdin Mamdin; M/s. Chin Mirdin & Co.
For public prosecutor - Saiful Edris bin Zainuddin, DPP

JUDGMENT

Ian H.C. Chin J:

This is an appeal by Simon Chua Kim Hork ("the appellant") against his conviction, handed down on 30 June 1989, of the following two charges, viz:

> (i) That you on 20 January 1986, at about 8.38 p.m. at the Choi Wah Sea Food Restaurant, No.1255, Batu 3, Jalan Apas, Tawau, in the District of Tawau, in the State of Sabah, being an agent of the Government of Malaysia to wit, Sergeant No.42378 of the Polis DiRaja Malaysia did corruptly accept for yourself a gratification, to wit, cash RM3,000 (Three Thousand Ringgit) from one Yau Yin Seng as a reward for doing an act in relation to your principal's affairs, to wit, for having assisted in the release of the said Yau Yin Seng and two of his friends who were arrested and detained for being suspected of having committed robbery and also to release their identity cards which were detained by you and that you have thereby committed an offence punishable under s. 4(a) of the Prevention of Corruption Act 1961 (Laws of Malaysia Act No. 57); and
>
> (ii) That you on 20 January 1986, at about 11.00 a.m. at the Police Station Tawau, in the District of Tawau in the State of Sabah, being an agent of the Government of Malaysia to wit, Sergeant No.42378 of the Polis DiRaja Malaysia did corruptly solicit for yourself a gratification of RM5,000 (Five Thousand Ringgit) from one Yau Yin Seng as an inducement for doing something in respect of a matter proposed to take place, to wit, to release the said Yau Yin Seng and two of his friend who were arrested and detained for being suspected of having committed robbery and also to release their identity cards which were detained by you and that you have thereby committed an offence punishable under s. 3(aHi) of the Prevention of Corruption Act 1916 (Laws of Malaysia Act No. 57).

He was sentenced to four months' imprisonment on each charge, with the sentences ordered to run consecutively. The appellant was also ordered to pay RM3,000 to the Federal Consolidated Fund. The Public Prosecutor had also appealed against the sentence. The record of appeal only reached the High Court on 12 April 1994. The delay in the disposal of this case will be adverted to in some detail later on.

The evidence for the prosecution, a very detail account of which had been given in the 32-page judgment of the learned Sessions Judge, can be briefly summarised, as follows. Yau Yin Seng (PW1), Yong Sek Hin (PW2) and Lee Yen Cho (PW3) were on the night of the 16 January 1986 visited by a police party and questioned as to whether they knew a person called Ah Liau. PW1 and PW2 expressed their ignorance while PW3 said he saw the person in the house in the morning but that he did not know the person. All three were thereafter arrested, taken to the police station and removed of their identity cards. The trio were the next morning at 9.00 a.m. taken to be interrogated by the appellant; the trio again denied knowing Ah Liau. The appellant berated them. This took place in a room shared by the appellant and a Malay policeman. The trio were returned to the cell where they remained until PW3 was again taken out of the cell at between 7 p.m. and 8 p.m. to see the appellant. PW3 and the appellant were alone in the room and it was then that the following conversation took place:

> Appellant : You want me to help you or not.
>
> PW3 : Yes:
>
> Appellant : You must know how to be a man

The purpose of the conversation, to the mind of PW3, was that PW3 should know what to do if PW3 wanted the appellant's help. I may add that the statements, *supra*, made by the appellant are a colloquial way of asking for money. PW3 was shown several photographs to all of which he said he does not know the persons shown. He was returned to the cell where he related to PW1 and PW2 what transpired. On 18 January 1986, the trio were remanded by the Court till 23 January 1986. That evening, PW3 was again taken to the appellant's room but this time, it was by the appellant himself. On this occasion, the appellant told PW3 that he had spoken to his superior and that the trio would be released on 20 January 1986. The appellant showed his five fingers and told PW3 he wanted those. PW3 then asked the appellant whether it was RM500 to which the appellant said :"No, RM5,000. PW3 told the appellant he did not have so much and asked to be allowed to talk to PW1 and PW2. PW3 was escorted back to the cell by the appellant.

PW1 and PW2 upon being told what happened, objected to the payment of RM5,000. On 20 January 1986 the appellant went to see PW3 in his cell and there asked PW3 whether he had talked to PW1 and PW2 to which PW3 said he had. The appellant told PW3 that the trio would be released that day. PW1 then asked to speak to the appellant in private and the appellant replied that his room could be used. Sometime later, at about 11.00 a.m., PW1 and PW3 were taken to the room of the appellant and it was in this encounter that the appellant suggested to PW1 that a sum of RM3,000 be paid first and that the balance of RM2,000 be paid after the same had been borrowed. PW1 pleaded that he be allowed to pay only RM3,000 to which the appellant replied that unless the RM2,00.00 is paid as well, their identity cards would not be returned to them and they would be made to report to the police every Saturday. The appellant then gave his home and office telephone numbers to PW1 but he told PW1 to call only the home number. The duo then went back to the lock-up. The trio were released by the Court at about 4.30 p.m. that afternoon after, I have no hesitation in saying, being needlessly and unjustifiably detained, at the instance of the police, for several days. PW1, while outside the police station after his release by the Court, asked the appellant for the return of the identity cards but the appellant said it was not necessary. The appellant also said that if they should be found without their identity cards, they could always return to the police station. PW1 then told the appellant that he would call him at 7.00 p.m. The trio then left for home. It was while at home that the trio contacted the Anti-Corruption Agency ("the ACA") and a trap was hedged to snare the appellant. A report was also lodged by PW1. The RM3,000 which PW1 and PW3 together had were used as trap money and were, after the serial numbers were taken down, placed inside a red envelope. PW1 was supposed to give the money to the appellant inside a certain restaurant and PW1 was to signal, by smoking a cigarette, after he had given the money to the Appellant. The trio and the police party then left for the restaurant. PW1 called the appellant over the phone. The appellant came in his car but he did not enter the restaurant. He got a satay boy to get PW1 to come to his car. The appellant got into the front passenger seat. After a short conversation, the money was handed to the appellant who put it in the dash board. PW1 lit the cigarette and got out of the car. After this the appellant began to drive his car away and was heading towards the direction of Suadi bin Suki ("PW12"), an officer of the ACA and a member of the trap party, and who was at that time positioned outside the restaurant. PW12 tried to stop the appellant's car but the appellant drove off. He and other officers then got into his car and gave chase while another officer also gave chase in another car. The officers proceeded to the house of the appellant. They found the appellant in his bedroom with his shoes still on and a revolver and ammunitions were also recovered from his person but the trap money was not found. One of the officer then went back the same route to the restaurant in an attempt to find the money but he was not successful. In the meantime, another ACA officer, ASP Roland Unai Limar ("PW16"), who refused to join the trap party because he knew the appellant, had found RM2,000 of the trap money lying on the road where the car of the appellant had previously traversed. PW16 was on his way back to the office of the ACA when he found the money. lt was upon the evidence that I have just set out that the appellant was called to enter upon his defence.

The appellant in his testimony denied he ever made demands for money as alleged by PW1, PW2 and PW3. The appellant also denied being asked by PW1 in the evening of the 20 January 1986 for the return of the identity cards. As for the identity cards, he was instructed by his superior officer ASP Rahman Abd. Wahid ("DW2") to get them from the trio, to keep them until further instruction from DW2 and that DW2 did not give any further instruction to return the identity cards. This was confirmed by DW2. As for the various occasions where the appellant met PW1 and PW3 in the police station, the defence version is as follows. On the 17 January 1986, the appellant caused the trio to be brought to his room which he shared with a corporal Paga ("DW3"). On this occasion the trio were asked by the appellant as to whether they knew a person called Ah Liau. The appellant berated the trio for not paying attention to him. That evening, PW3 was further interrogated as to whether he knew Ah Liau. On the evening of the 18 January 1986, PW3 was again taken to the appellant room to be again interrogated and it was not fruitful. The appellant explained that PW1 and PW2 were not interrogated because it was, according to information, only PW3 who knew Ah Liau. On the morning of the 20 January 1986, DW2

instructed the appellant to release the trio after the appellant had informed DW2 that no information could be obtained from the trio. The appellant thereafter told PW3 of their impending release and it was then that PW1 said he wanted to see the appellant in private. lt was at 11.00 a.m. that the appellant had PW1 brought to his office but PW3 came as well. lt was in this meeting that PW1 asked for all of them to be released earlier so that they could help locate Ah Liau and because they cannot stand the condition of the lock-up any longer. The appellant then told them that they have to be released by the Court and also that if they have information about Ah Liau they could call him, whereupon he gave them his office and house telephone numbers. This meeting was also witnessed by DW2. As for the telephone call to his house by PW1, the appellant testified that PW1 told him he had information about Ah Liau which was not covenient to be relayed over the phone. He went to the restaurant as requested by PW1 but he did not go inside the restaurant to see PW1 as he did not want to expose PW1 as being an informant. He instead got someone to get PW1 to come to his car. PW1 went inside his car and told the appellant that Ah Liau was still in Tawau. The appellant expressed his annoyance at the very little information. PW1 then began to smoke and left the car. Just he was about to drive away, 3 to 4 persons raised their hands in front of his car. The appellant thinking that these people were robbers sped away even though he was armed because he was afraid that he may be overpowered. He proceeded home first though he intended to go to his office because he wanted to pick up the roster which he left at home. He reached home but before he could take the roster the trap officers came and searched his room and person. DW3 testified that the appellant on the occasions on the 17 January 1986 and the 20 January 1986 spoke to the trio. He testified that the appellant on the 17 January 1986 spoke to the trio in Hakka and he heard him berating them. He also heard the appellant questioned two of them on the 20 January 1986, also in Hakka. He testified that there was no mention of money. He was tested on his knowledge of the Hakka dialect and the Court interpreter confined that he could speak Hakka. Having already set out the evidence of both the prosecution and the defence, I will now turn to the grounds of appeal.

The first of the grounds of appeal can be said to be directed at the evidence. It will be recalled that no trap money was found in the person or in the car or in the house of the appellant but RM2,000 of the money together with the envelope was found by PW16 who was driving a van back to the ACA office almost immediately after the trap party had driven off in pursuit of the appellant and it was found on the road which the appellant had traversed in his car. PW16's evidence also revealed the wind was not blowing that night and the money he recovered were in two bundles, with one bundle slightly out of the envelope lying on the road while the other bundle was completely outside but close to the envelope. PW16 tried but failed to locate the other RM1,000 before he returned to the ACA office. PW16 went back to the place with the trap officers to again try and locate the other RM1,000 but it was in vain. In relation to this ground, l am of the view that what should be considered is whether the fact that only RM2,000 was recovered from the road can cast any reasonable doubt in the case of the prosecution that PW1 had handed RM3,000 in an envelope to the appellant in the car. It matters not that there was only the evidence of PW1 that he had handed the RM3,000 to the appellant because the law does not lay down that there should be any number of witnesses before the evidence can be accepted. In fact, s. 134 of the Evidence Act 1950 says:

> No particular number of witnesses shall in any case be required for the proof of any fact.

Evidence can also be circumstantial or by way of inferences and as such, the issue also is not whether anyone had seen the appellant threw the money out of the window because an inference can be drawn even though there is no eye witness or direct evidence. Whether it should be drawn, of course, depends on the evidence. In the present case, what has to be considered is whether the failure to recover all the RM3,000 from the road makes such an inference not irresistible. Since there was no wind blowing and since PW16 drove off almost immediately after the appellant and the trap officers drove off, it is to be expected that the same money, enclosed in an envelope which PW1 gave to the appellant and which the appellant was alleged to have thrown out of the car, ought to have been recovered. Unless the missing RM1,000 can be explained, it should cast a shadow of doubt on the allegation of PW1 that he had given the

appellant the RM3,000 because if RM3,00 was given, RM3,000 should have been recovered given the fact that the money was recovered almost immediately after it was alleged to have been thrown away by the appellant. The learned Sessions Judge did not deal with the missing RM1,000, which was raised at the close of the prosecution case by the erstwhile Counsel for the appellant nor in his judgment at the close of the case, but he came to the conclusion that he was satisfied that PW1 did in fact give the appellant RM3,000 just before the appellant drove off. The learned Sessions Judge rejected the appellant's version as to what happened in the car on the following grounds, viz:

(1) the alleged information, apart from PW1 not being the possible person to supply the information since he did not know Ah Liau, could have been given to the appellant over the telephone and thus the appellant could not be there for the reason of receiving the information from PW1;
(2) the refusal of the appellant to go inside the restaurant to meet PW1 and PW2 could not be for the reason that he did not want to expose PW1 because by getting the satay boy to fetch PW1, the appellant was also exposing him;
(3) the appellant would have stopped nearby after he saw the trap officers tried to stop his car or gone straight to the police station to report what he perceived was an attempted robbery but he did not and instead went home;
(4) the appellant still had his shoes on when he was in the bedroom of his house after being pursued by the trap officers; and
(5) the duty roster, which the appellant claimed he wanted to take from the house before he proceeded to the police station, was not produced by the appellant.

The learned Sessions Judge concluded his judgment in this way:

> The next point I would like to touch upon is the question of corroboration. There is no gainsaying that this case is one that can aptly be described as the complainant's words against that of the [appellant's]. There were no eye witnesses who saw PW1 gives the money to the appellant. Nevertheless the conduct of the [appellant] in refusing to go into the restaurant, his subsequent conduct when the ACA officers saw him in his room and the fact that the money was found at the junction where the appellant stopped or slowed down his car point irresistibly to one and only one conclusion that he received the money corruptly as a reward for having assisted in the release of PW1, PW2 and PW3 and for the release of their identity cards. The evidence that the identity cards of PW1, PW2 and PW3 were found in the appellant's drawer confirms these witnesses' evidence in respect of their identity cards as such provides strong corroboration to their evidence. If it is not to be considered as corroboration I take this opportunity once again to say how impressed I am with these witnesses. I am completely satisfied that they were telling the truth and I am fully aware and in fact remind myself of the danger of [convicting] the appellant on the uncorroborated evidence of these prosecution agents. As for PW1 in view of s. 18 of the Act he should not be presumed to [be] unworthy of credit by reason only of the payment made by him.

But it still leaves unanswered this question: why is it that only RM2,000 was recovered instead of RM3,000 if the appellant had in fact received and thrown away the RM3,000 out of his car? It remains a mystery and it casts doubt on whether the RM3,000 had in fact been handed over by PW1 to the appellant. Another unsatisfactory feature of this case is that the best evidence available, in the form of finger-prints, was not forthcoming. The appellant was alleged to have received the envelope containing the money from PW1 and the appellant was alleged to have thrown the envelope while he was fleeing the trap of officers, all of which lead one to expect the appellant to have left his finger-prints on the envelope and which envelope was recovered almost immediately after it was alleged to have been thrown away by the appellant, yet no evidence was given as to whether finger-prints were lifted from the envelope with the result that there was no evidence that the finger-prints of the appellant were on the envelope. This is the vital missing link in the chain of evidence. Since there is no evidence that the appellant finger-prints were on the envelope and since only RM2,000 was recovered from the road, it had not been proved beyond reasonable doubt that the appellant received the RM3,000 or that he had thrown the money away. For the reasons I have stated I am of the view that the appellant should have been discharged and requited of the charge of corruptly receiving RM3,000 gratification at the close

of the case for the prosecution. Mr. Saiful Edris bin Zainuddin, the learned DPP, referred the Court to the case of *Che Din bin Ahmad v. PP* [1976] 1 MLJ 289, where it was held that it was not incumbent on the prosecution to prove that the money was in the possession of an accused person if the Court is satisfied from the evidence that it was the accused who received the money, and argued that it does not matter that the RM3,000 was not found on the accused since the learned Sessions Judge was satisfied with the evidence of PW1 that he had handed the money to the appellant. In that case the same amount of money was found in someone else's pocket after the giver had handed the money to the accused and that someone testified that it was the accused person who had handed him the money for safe-keeping. The evidence in that case explained how the money came to be in someone else's pocket and not with the accused person whereas in our case, it is not explained why only RM2,000 out of the RM3,000 was found on the road. How can the learned Sessions Judge, in our case, be satisfied that RM3,000 was given by PW1 to the appellant when it could not be explained why only RM2,000 was recovered and when this point was not even considered by him; here lies the difference between this case and *Che Din bin Ahmad v. PP Case, supra.*

Another ground of appeal pertains to the charge of solicitation, and, though not in so many words, it seems to me that the thrust of the argument of Mr. Mirdin Mamdin is that since the appellant was not in a position to decide whether to release the trio or not and their identity cards as well, he could not have solicited the gratification of RM5,000 which is the subject-matter of the first charge. In this case, the appellant, as was correctly found by the learned Sessions Judge, was in a position to influence a decision whether to release the trio and this is conceded by Mr. Mirdin Mamdin when in his written submission he said this of the appellant: "He at best could only recommend their release subject to the final approval of his senior officers (OCPD or DCO)". I fail to see how the fact that the final authority to release the trio rests not with the appellant makes it unlikely for the appellant to have solicited the money; the appellant, as said earlier, was in a position to influence the decision and it was thus probable that the appellant had made the solicitation because of his influence.

It was next argued that there could not be solicitation on the 18 January 1986 as otherwise the appellant would have "done his best to convince his superior not to apply for a remand". Surely, in order for the appellant to be in a position to exact a demand, that is to solicit, it would be better that the trio be locked up, in which situation the trio would be more likely to agree to the solicitation, than be released on bail where the trio would surely not bother with whatever the appellant wanted. Therefore, with all due respect, I do not see the logic of that argument.

There were other references to evidence which the learned Sessions Judge had already dealt with in his judgment and had given his reasons for accepting or rejecting them. Mr. Mirdin Mamdin had not been able to show the Court how the learned Sessions Judge had erred in arriving at those decisions. DW3 had given evidence, which was to the effect that there was no mention of money when the appellant interrogated PW1 and PW3, which if accepted by the Court, would have entitled the appellant to an acquittal but the learned Sessions Judge had given his reasons for rejecting the evidence of this witness. Mr. Mirdin Mamdin did not take issue with regard to the rejection of the evidence of DW3. Similarly, Mr. Mirdin Mamdin, did not take issue in the way in which the Court rejected the evidence of DW2, the superior officer of the appellant. There is one area where the learned Sessions Judge was wrong and this is where he concluded that because the law says the identity card of a person cannot be detained, it could not be believed that DW2 had continued the detention by not having given instruction to the appellant to return the identity cards to the trio. His reasoning for rejecting the evidence of DW2 is flawed because what the law says is one thing but what an individual does is another. In this case DW2 had admitted that though it was against the law the identity cards were retained because he did not give instruction to the appellant to release the same to the trio. But it does not matter because even assuming that DW2 actually did not give instruction to the appellant to release the identity cards, it does not mean that the appellant was not in a position to make the solicitation. In fact, the appellant was in a far better position to make a successful solicitation on account of the continued retention of the identity cards of the trio. Therefore, though the learned Sessions Judge may have misdirected himself, it did not occasion any miscarriage of

justice as there are evidence to support the finding of solicitation all of which have been very well set out in the judgment. I would also add, though no issue was taken at the appeal, the learned Sessions Judge had also dealt with the question of corroboration adequately. It is trite law that an appellate Court cannot disturb the findings of the lower Court unless the appellant can demonstrate that those findings are unreasonable or cannot be supported having regard to the evidence or are plainly wrong or perverse. The appellant had failed to do that with regard to the conviction for the offence of solicitation.

In the premises, I allow the appeal against the conviction of the charge of receiving RM3,000 gratification and I set aside the order of conviction, sentence and penalty. I uphold the conviction of the appellant of the charge of solicitation but I set aside the sentence of imprisonment for the following reasons.

The appellant was arrested on the 20 January 1986 and thereafter, the trial of this case proceeded in the following manner, viz:

(a) 3 May 1986	Plea taken, hearing fixed for 5 August 1986;
(b) 27 July 1986	Prosecution applied for adjournment because witness would be involved in Seremban on 5 August 1996. Case adjourned to 1 October 1986;
(c) 1 October 1996	The hearing commenced and continued until the 3 October 1986 when it was, at the request of the prosecution, adjourned to the 9 December 1996;
(d) 9 December 1996	The hearing resumed and continued until the 11 December 1986 when it was, again at the request of the prosecution, adjourned to the 20 January 1987;
(e) 20 January 1987	The hearing resumed and continued until the 22 January 1987 when it was adjourned, at the instant of the Court, to the 12 May 1987 but, because that was Wesak Day, was later moved to the 14 July 1987;
(f) 14 July 1987	The hearing resumed and continued until the 16 July 1987 when it was, at the instant of the Court, adjourned to the 3 August 1987;
(g) 3 August 1987	Hearing continued and was adjourned, at the request of the prosecution, to the 6 October 1987 but the date was changed to the 8 March 1988;
(h) 8 March 1988	Prosecution closed its case. Written submissions were ordered to be submitted to the Court within one month;
(i) 13 October 1988	Court ruled that there was a *prima facie* case established. The case was adjourned to the 11 January 1989 for continue hearing because the prosecution was not ready to continue;
(j) 11 January 1989	The hearing resumed and continued until the 13 January 1989 when it was adjourned for written submissions;
(k) 30 June 1989	Court delivered judgment;
(l) 5 July 1989	Notice of Appeal filed by appellant and PP;
(m) January 1994	Lower Court served notes of proceedings on appellant;
(n) 25 January 1994	Appellant filed Petition of Appeal;
(o) 12 April 1994	Record of Appeal received from lower Court.

The above chronology shows a staggered or broken trial held over ten sessions and over a period of well over two and half years which is surely not how justice should be dispensed. In fact, delayed and broken trials are substantial obstacle in the way of justice. See *K. Ratnasingam v. Kow Ah Dek & Anor.* [1983] 2 MLJ 297 PC and *PP v. Kian Mei Sdn. Bhd.* [1992] 4 CLJ 2168. Very recently the Supreme Court (as it was then known) in *Tan Hun Wah v. PP* [1994] 1 AMR 3: 113, *inter alia,* held that:

(1) the accepted practice and procedure of criminal trials requires criminal trials to be carried out from day to day until conclusion unless it is absolutely necessary to adjourn the trial.
(2) part heard case should not be adjourned sine die as the quality and reliability of the judgment of the Court would be affected in relation to evaluation of the demeanour of witnesses during cross-examination and certain primary evidence.
(3) submissions must be made orally when the evidence is still fresh in the mind.
(4) the appellant had a right to fair trial and this principle will be applied rigorously where the excessive delay is caused by the Court; and
(5) the appellant accused was prejudiced by the delay in the trial, which was spread over the whole year of 1988, and also by the delay in supplying the grounds of judgment, which was given about 3 years after the decision.

If this case was decided purely on the basis of the impressive demeanour of PW1, PW2 and PW3, I would have also set aside the conviction for solicitation because, by the time the learned Sessions Judge considered his judgment after the close of the defence case and therefore reconsidered the evidence of PW1, PW2 and PW3 in the light of the evidence of the defence, it was more than two years after the trio had given evidence and it was not possible then to remember the demeanour of the trio even assuming, which is unlikely, that all this while this was the only trial case the learned Sessions Judge had to deal. But there were evidence which corroborated the allegation of solicitation and which the learned Sessions Judge had set out and which Mr. Mirdin Mamdin did not take issue. Hence, the conviction therefore was not purely on the impressive demeanour the trio. That does not mean that the staggered or broken trial and the very long delay in supplying the notes of proceedings did not prejudice the appellant. The law demands, though not a hurried, but, a speedy trial. An accused person should not be dragged in and out of Court for so many years and on so many occasions. Neither should he be made to wait for so many years for the disposal of his appeal. It is not difficult to see the anxiety the appellant had undergone which in itself is a form of punishment and punishment before verdict at that. In the end, every one suffers as a result of the delay, not forgetting the Government of Malaysia who had to pay the appellant half salaries while he was interdicted. It is for the reasons that I have just set out that I set aside the sentence of imprisonment and instead fine the appellant the sum of RM3,000. Since the appellant had already paid the penalty of RM3,000 in respect of the conviction of the charge of receiving a gratification which I had set aside, the money so paid shall be regarded as payment of the fine.